



**Melton  
Borough  
Council**

**DATA PROTECTION POLICY:  
SUBJECT ACCESS (SAR) / THIRD PARTY  
REQUESTS FOR PERSONAL  
INFORMATION POLICY**

**Key Policy Details**

| <b>Item</b> | <b>Details</b>             |
|-------------|----------------------------|
| Author:     | Legal & Governance Manager |
| Owner:      | Data Protection Officer    |
| Version No: | 1.0                        |
| Date:       | July 2020                  |

## Contents

| Paragraph | Heading  | Page |
|-----------|--|------|
| 1.0       | Introduction   | 3    |
| 2.0       | What is a Subject Access Request?                                | 4    |
| 3.0       | Recognising a Request  | 4    |
| 4.0       | Request Form   | 4    |
| 5.0       | What is an Individual Entitled to?                               | 4    |
| 6.0       | How Information Should be Provided                               | 5    |
| 7.0       | Can I Charge a Fee   | 5    |
| 8.0       | What Happens if Information Changes from the Date of the Request | 5    |
| 9.0       | When Information Should be Provided                              | 5    |
| 10.0      | Extending Time Limits  | 6    |
| 11.0      | Refusing to Comply   | 6    |
| 12.0      | Requests For Information About Children                          | 6    |
| 13.0      | Requests for Occupational Health Records                         | 7    |
| 14.0      | Requests for Archive Records                                     | 7    |
| 15.0      | Complaints   | 7    |
| 16.0      | The Information Commissioners Office                             | 8    |
| 17.0      | The Information Tribunal   | 9    |

## 1.0 INTRODUCTION

- 1.1. In delivering services to the public, it is necessary for the Council to process a significant amount of personal data relating to individuals. The General Data Protection Regulation (GDPR) and the Data Protection Act 2018 (the Act) give individuals a number of rights, including a right to obtain a copy of their personal data as well as other supplementary information. This right of access, is often referred to as a right of “subject access”. It helps individuals understand how and why you are using their data, and checks you are doing it lawfully.
- 1.2 In addition to rights in relation to accessing their data the Act and GDPR give individuals a number of additional rights including the right to rectification (correction of inaccurate data), the right to erasure (sometimes referred to as the right to be forgotten), the right to restrict processing and the right to object to the processing of their data. Some of these rights are qualified rights, which means there are some exceptions to them; further information in relation to these rights is contained on the Council’s website:  
  
[http://www.melton.gov.uk/info/200031/data\\_protection\\_and\\_freedom\\_of\\_information/242/view\\_information\\_we\\_hold\\_about\\_you](http://www.melton.gov.uk/info/200031/data_protection_and_freedom_of_information/242/view_information_we_hold_about_you)
- 1.3 Requests for information in accordance with the Act differ from requests for information under the Freedom of Information Act 2000 by virtue of the fact that the information identifies the requester and is about them personally.
- 1.4 Under the Act the Council has a legal obligation to provide a copy of the data to the requester without undue delay and at the latest within 1 month of receipt. If the request is particularly complex, or repeated, in some cases it is possible to extend the period by a further 2 months. In addition to receiving their personal data, individuals also have a right to know why you are processing their personal data, the categories of data you are processing, who you share this information with, how long you keep their information for, where it originated from, how it is stored, who they can complain to if they are not happy with the way their information has been handled and how their information is safeguarded. Some of this information is likely to be included in the [Council’s privacy notices](#) at and the Council’s retention schedules at  
  
[http://www.melton.gov.uk/info/200031/data\\_protection\\_and\\_freedom\\_of\\_information](http://www.melton.gov.uk/info/200031/data_protection_and_freedom_of_information)
- 1.5 This policy details the way in which the Council should process a SAR request.
- 1.6 The Information Commissioner’s Office also produces helpful guidance which is regularly updated and will assist in ensuring that the Council is following best practice. Please see the following link: <https://ico.org.uk>

## 2.0 WHAT IS A SUBJECT ACCESS REQUEST?

- 2.1 If an individual makes a request for their personal information, this should be considered to be a Subject Access Request and processed in accordance with this policy.

### **3.0 RECOGNISING A REQUEST**

- 3.1 The GDPR does not specify how to make a valid request. Therefore, unlike under the previous Data Protection Act, a request does not have to be in writing, it can be made verbally. It can also be made to any part of the Council (including via social media).
- 3.2 A request does not have to include any specific wording such as 'subject access request', it just has to be clear that the individual is asking for their own personal data.

### **4.0 REQUEST FORM**

- 4.1 A template request form has been produced to assist individuals in making a request and also the Council in locating the relevant information. However, whilst we may invite individuals to use the template form, it is not compulsory and requests made by letter, email or verbally must still be responded to. The form can be found at:  
[http://www.melton.gov.uk/info/200031/data\\_protection\\_and\\_freedom\\_of\\_information/242/view\\_information\\_we\\_hold\\_about\\_you](http://www.melton.gov.uk/info/200031/data_protection_and_freedom_of_information/242/view_information_we_hold_about_you)

### **5.0 WHAT IS AN INDIVIDUAL ENTITLED TO?**

- 5.1 Individuals have the right to obtain the following:
- Confirmation that you are processing their personal data and the legal basis for the processing;
  - The categories of personal data concerned;
  - The recipients or categories of recipients to whom their personal information has been disclosed;
  - Details of how long their information will be kept
  - Any information held relating to the origin of their personal data
  - A copy of their personal data; and

- Confirmation of their right to lodge a complaint with the Information Commissioner
- 5.2 The request does not have to be received by a particular officer within a department to be valid. It can be sent to any Council officer. The deadline for responding will be calculated from the day following receipt (whether this is a working day or not) so it is important to ensure that it is forwarded as soon as possible to the relevant departmental contact.

## **6.0 HOW INFORMATION SHOULD BE PROVIDED**

- 6.1 If an individual makes a request electronically, where possible you should provide the information in a commonly used electronic format, unless the individual requests otherwise.

## **7.0 CAN I CHARGE A FEE FOR RESPONDING TO A REQUEST?**

- 7.1 In most cases you cannot charge a fee to comply with a subject access request. However, where the request is manifestly unfounded or excessive you may charge a “reasonable fee” for the administrative costs of complying with the request.
- 7.2 You can also charge a reasonable fee if an individual requests further copies of their data following a request. You must base the fee on the administrative costs of providing further copies. You should seek guidance from legal services if you are considering charging a fee.

## **8.0 WHAT HAPPENS IF INFORMATION CHANGES FROM THE TIME OF THE REQUEST?**

- 8.1 The Information Commissioner’s view is that a subject access request relates to data held at the time the request was received. However, in some cases routine use of data may result in it being amended, or even deleted during the time you are dealing with the request. In these circumstances it would be reasonable to supply information you hold at the time you send out the response, even if this is different to material held when the request was received.
- 8.2 You must not amend, or delete data relevant to the request if you would not otherwise have done so. Under the Data Protection Act 2018, it is an offence to make any amendment to information held with the intention of preventing disclosure.

## **9.0 WHEN INFORMATION SHOULD BE PROVIDED**

- 9.1 You must act on the subject access request without undue delay and at the latest within 1 month of receipt.
- 9.2 You should calculate the time limit from the day after you receive the request (this includes weekends and bank holidays), until the corresponding calendar date in the next month (for example, if the subject access request is received on 3 October then it should be responded to by 3 November). If this is not possible e.g. the following month is shorter and there is therefore no corresponding calendar date, the date for response is the last day of the following month. If the corresponding date is a weekend or bank holiday, the Council has until the following working day to respond. This means that the exact number of days will vary between requests. For reasons of administrative convenience you may calculate the deadline on the basis of a 28 day period to ensure your compliance date is always within a calendar month.

## **10.0 EXTENDING TIME LIMITS**

- 10.1 It is possible to extend the time to respond by a further 2 months if the request is complex or the Council has received a number of requests from the same individual. You must let the individual know within 1 month of receiving their request if you intend to extend the time limit in respect of their request and you must explain to them why the extension is necessary.
- 10.2 Time limits will only be extended following approval from the Data Protection Officer or their Deputy.

## **11.0 REFUSING TO COMPLY WITH A REQUEST**

- 11.1 You can only refuse to comply with a subject access request if it is manifestly unfounded or excessive, taking into account whether the request is repetitive in nature. If you consider that a request is manifestly unfounded or excessive you can request a “reasonable fee” to deal with the request or refuse to deal with it. However, in either case you will need to justify your decision and confirm the reasons for this to the requester.
- 11.2 If you decided to charge a fee you do not need to comply with the request until this has been received.

## 12.0 REQUESTS FOR INFORMATION ABOUT CHILDREN

- 12.1 Even if a child is too young to understand the implications of subject access rights, it is still the right of the child to make a request rather than anyone else such as a parent or guardian. In the case of young children, this is likely to be exercised by those with parental responsibility.
- 12.2 Before responding to a subject access request for information held about a child, you should consider whether the child is mature enough to understand their rights. If you are confident that a child can understand their rights then you should usually respond directly to the child.
- 12.3 When considering borderline cases, you should take into account, amongst other things:
- The child's level of maturity and their ability to make decisions like this;
  - The nature of the personal data;
  - Any court orders relating to parental access or responsibility that may apply;
  - Any duty of confidence owed to the child or young person;
  - Any consequence of allowing those with parental responsibility access to the child's or young person's information. This is particularly important if there have been allegations of abuse or ill treatment;
  - Any detriment to the child or young person if individuals with parental responsibility cannot access this information;
  - Any views of the child or young person has on whether their parents should have information about them
- 12.4 If you are offering an online service directly to children on the basis of consent, then the Act specifies 13 years old as the appropriate age of consent.

## 13.0 REQUESTS FOR OCCUPATIONAL HEALTH RECORDS

- 13.1 The Council's Occupational Health Unit holds health information about employees, former employees and prospective employees. You should direct the requester to occupational health if they want information held by that department.

## 14.0 REQUESTS FOR ARCHIVAL RECORDS HELD BY THE LEICESTERSHIRE RECORD OFFICE

- 14.0 Historical archives held at the Record Office may be held by Leicestershire County Council on behalf of another organisation, with different access requirements and an external Data Controller, depending on the type of material and which organisation deposited the records. Subject Access Requests relating to archives at the Record office will be managed by the Duty

Archivist. The National Archives August 2018 Guide To Archiving Personal Data, is available here:

[Guide to archiving personal data \(nationalarchives.gov.uk\)](http://nationalarchives.gov.uk)

## 15.0 COMPLAINTS

- 15.1 All complaints about subject access must be immediately notified to the Information Officer (IO) who will determine the appropriate next steps.
- 15.2 The IO maintains a record of all requests for internal reviews and complaints which are escalated to the Information Commissioner's Office. This data is shared with the Council's Data Protection Officer.

## 16.0 THE INFORMATION COMMISSIONERS OFFICE

- 16.1 The Commissioner is an independent officer who reports directly to parliament. The Commissioner has the central role of ensuring compliance with Information Rights. Some of the Commissioner's duties are to promote good practice, provide information to the public about Data Protection and consider complaints from applicants who believe that authorities have not dealt properly with their requests.
- 16.2 The Commissioner's powers under DPA relate to public authorities which includes the Council. Those powers can be summarised as follows:
  - a. Serving a decision notice on a public authority which the Commissioner has decided has failed to respond properly to a request for information under DPA.
  - b. Serving an information notice requiring a public authority to provide specified information to enable the Commissioner to discharge his duties under DPA.
  - c. Serving an Enforcement Notice if the Commissioner is satisfied that a public authority has failed to comply with any of the requirements of the DPA. An enforcement notice may be served even if the Commissioner has not received a specific complaint.
- 16.3 There will be cases when a public authority does not release information requested and the applicant exercises the right to complain. Provided that the applicant has exhausted all the local complaints procedures with the exception of frivolous or vexatious complaints, the Commissioner will make a decision as to the disclosure or refusal of information.



- 16.4 Decision notices issued by the Commissioner are binding unless there is a successful appeal to the Information Tribunal, failure to comply is punishable as a contempt of court.
- 16.5 Upon receipt of a complaint the Commissioner will require a public authority to provide copies of internal documentation and a copy of all information which has been withheld.
- 16.6 The Commissioner has the power to issue information notices placing authorities under a statutory duty to provide the relevant information, as with decision notices and enforcement notices non-compliance is punishable as a contempt of court.
- 16.7 For further independent advice please contact:

Information Commissioner  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF

Website: [www.ico.org.uk](http://www.ico.org.uk)

Telephone: 01625 545745

## 17.0 THE INFORMATION TRIBUNAL

- 17.1 An applicant or a public authority may appeal to the Tribunal against a decision of the Commissioner.
- 17.2 The Tribunal has powers to allow or dismiss an appeal or substitute a notice or dismiss an appeal or substitute a notice that could have been served by the Information Commissioner.